



# United States Department of the Interior

## BUREAU OF LAND MANAGEMENT

### Color Country District Office

#### Cedar City Field Office

176 East DL Sargent Drive

Cedar City, UT 84721

Telephone (435) 586-2401

[www.blm.gov/ut/st/en/fo/cedar\\_city.html](http://www.blm.gov/ut/st/en/fo/cedar_city.html)

S1001/0054  
cc: Peter



#### In Reply Refer To:

UTC01

3809: UTU-78613

RECEIVED

JUN 12 2013

DIV. OF OIL, GAS & MINING

June 6, 2013

CERTIFIED MAIL-RETURN RECEIPT REQUESTED

#7010 3090 0002 9010 8820

### Decision

**Operator:** David Penney  
Penney's Gemstones, LLC  
P.O. Box 312  
Beaver, UT 84713-0312

**Notice:** UTU-78613  
**Project Name:** Lost Gems

### Non-Compliance Order

Notice UTU-78613 was filed with this office on June 8, 2000, and acknowledged as complete via letter dated June 22, 2000. Following the implementation of the new 43 CFR 3809 regulations, effective January 21, 2001, the notice was timely extended and reclamation bonded by the regulatory deadline of January 21, 2003. In compliance with section 3809.333 of those new regulations (requiring that an operator wishing to extend their notice must notify the BLM in writing on or before the two-year anniversary date of the notice), you timely re-extended the notice on or before the two-year anniversary date of the 2003 date, in 2005, 2007, and 2009. This office did not receive written notification to extend the UTU-68596 notice on or before the 2011 anniversary date of January 21, 2011; consequently, your notice expired on January 22, 2011.

You were previously notified of the notice expiration through decision letter dated January 26, 2011. That decision letter informed you of the following:

"Pursuant to 43 CFR 3809.335, you must immediately cease all operations with the exception of reclamation. To ensure that you meet the standards described in 3809.335(a)(2), the following items must be completed:

1. Re-contour surface prospect pits created under this notice (refer to item on the enclosed Reclamation Standards), and
2. Scarify and seed disturbed prospect pits site (refer to item 6 on the enclosed Reclamation Standards).



You must notify this office before you start reclamation and again upon completion of reclamation. BLM will schedule an inspection to verify whether you have met your reclamation obligations and notify you promptly in writing of the results of the inspection and close your notice if appropriate.

Your reclamation obligation continues beyond the expiration of your notice until such time as BLM determines that the reclamation is satisfactorily completed. Failure to begin reclamation promptly or to conduct reclamation to BLM specified standards is subject to the enforcement actions specified in 43 CFR 3809.601 to 43 CFR 3809.701.

If you wish to resume operations you may postpone reclamation if you file a new notice pursuant to 43 CFR 3809.301. The notice must be accepted and a financial guarantee accepted prior to any additional earth disturbing activities occurring at this site. If the newly submitted notice is not accepted, you must begin reclamation within 30 days of BLM's decision finding that the new notice is incomplete or unacceptable."

***Since the decision was issued two years ago, reclamation has been only partially completed on the project disturbances, resulting in the operation being in non-compliance. To correct this non-compliance you must, no later than October 15, 2013:***

- 1. Complete earthwork reclamation of the project disturbances by pocking the entire length of new access road to the prospect pits and dragging dead and down trees across the pocked surface.***
- 2. Broadcast seed all reclaimed areas.***

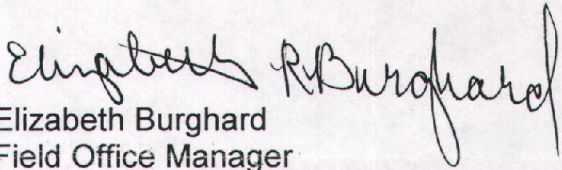
***Should you fail to complete the required reclamation work by October 15, 2013, BLM may initiate forfeiture of all or part of your financial guarantee as provided for under 43 CFR 3809.424 and 3809.595. If the available bond monies do not cover the total contract and administrative costs incurred in reclaiming the plan disturbances, you will be billed for any remaining costs. You may also be subject to enforcement actions under 43 CFR 3809.601.***

If you are adversely affected by this decision, you may request that the Utah BLM State Director review this decision. If you request a State Director Review, the request must be received in the Utah BLM State Office at P.O. Box 45155-0155, Salt Lake City, Utah 84145-0155, no later than 30 calendar days after you receive or have been notified of this decision. The request for State Director Review must be filed in accordance with the provisions in 43 CFR 3809.805. This decision will remain in effect while the State Director Review is pending, unless a stay is granted by the State Director. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

If the State Director does not make a decision on your request for review of this decision within 21 days of receipt of the request, you should consider the request declined and you may appeal this decision to the Interior Board of Land Appeals (IBLA). You may contact the Utah BLM State Office to determine when BLM received the request for State Director Review. You have 30 days from the end of the 21-day period in which to file your Notice of Appeal with this office at Cedar City Field Office, 176 East DL Sargent Drive, Cedar City, UT 84721, which we will forward to IBLA.



If you wish to bypass a State Director Review, this decision may be appealed directly to the IBLA in accordance with the regulations at 43 CFR 3809.801(a)(1). Your Notice of Appeal must be filed in this office at Cedar City Field Office, 176 East DL Sargent Drive, Cedar City, UT 84721 within 30 days from receipt of this decision. As the appellant you have the burden of showing that the decision appealed from is in error. Enclosed is BLM Form 1842-1 that contains information on taking appeals to the IBLA. This decision will remain in effect while the IBLA reviews the case, unless a stay is granted by the IBLA. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

  
Elizabeth Burghard  
Field Office Manager

Enclosures: Reclamation Standards for Cedar City Field Office  
Form 1842-1, Information on Taking Appeals to the Interior Board of Land  
Appeals.

cc: Peter Brinton, DOGM (UDOGM file S/001/0056)  
Terry Snyder, UT-923



UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

INFORMATION ON TAKING APPEALS TO THE INTERIOR BOARD OF LAND APPEALS

DO NOT APPEAL UNLESS

1. This decision is adverse to you,
- AND
2. You believe it is incorrect

IF YOU APPEAL, THE FOLLOWING PROCEDURES MUST BE FOLLOWED

1. NOTICE OF  
APPEAL.....

A person who wishes to appeal to the Interior Board of Land Appeals must file in the office of the officer who made the decision (not the Interior Board of Land Appeals) a notice that he wishes to appeal. A person served with the decision being appealed must transmit the *Notice of Appeal* in time for it to be filed in the office where it is required to be filed within 30 days after the date of service. If a decision is published in the FEDERAL REGISTER, a person not served with the decision must transmit a *Notice of Appeal* in time for it to be filed within 30 days after the date of publication (43 CFR 4.411 and 4.413).

2. WHERE TO FILE

Elizabeth Burghard, Field Office Manager  
BLM- Cedar City Field Office  
176 E DL Sargent Dr  
Cedar City, UT 84721

NOTICE OF APPEAL.....

WITH COPY TO  
SOLICITOR...

John Steiger  
Office of the Regional Solicitor  
125 S State St, Suite 6201  
Salt Lake City, UT 84138

3. STATEMENT OF REASONS

Within 30 days after filing the *Notice of Appeal*, file a complete statement of the reasons why you are appealing. This must be filed with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. If you fully stated your reasons for appealing when filing the *Notice of Appeal*, no additional statement is necessary (43 CFR 4.412 and 4.413).

WITH COPY TO  
SOLICITOR.....

John Steiger  
Office of the Regional Solicitor  
125 S State St, Suite 6201  
Salt Lake City, UT 84138

4. ADVERSE PARTIES.....

Within 15 days after each document is filed, each adverse party named in the decision and the Regional Solicitor or Field Solicitor having jurisdiction over the State in which the appeal arose must be served with a copy of: (a) the *Notice of Appeal*, (b) the Statement of Reasons, and (c) any other documents filed (43 CFR 4.413).

5. PROOF OF SERVICE.....

Within 15 days after any document is served on an adverse party, file proof of that service with the United States Department of the Interior, Office of Hearings and Appeals, Interior Board of Land Appeals, 801 N. Quincy Street, MS 300-QC, Arlington, Virginia 22203. This may consist of a certified or registered mail "Return Receipt Card" signed by the adverse party (43 CFR 4.401(c)).

6. REQUEST FOR STAY.....

Except where program-specific regulations place this decision in full force and effect or provide for an automatic stay, the decision becomes effective upon the expiration of the time allowed for filing an appeal unless a petition for a stay is timely filed together with a *Notice of Appeal* (43 CFR 4.21). If you wish to file a petition for a stay of the effectiveness of this decision during the time that your appeal is being reviewed by the Interior Board of Land Appeals, the petition for a stay must accompany your *Notice of Appeal* (43 CFR 4.21 or 43 CFR 2801.10 or 43 CFR 2881.10). A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the *Notice of Appeal* and Petition for a Stay **must** also be submitted to each party named in this decision and to the Interior Board of Land Appeals and to the appropriate Office of the Solicitor (43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

**Standards for Obtaining a Stay.** Except as otherwise provided by law or other pertinent regulations, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards: (1) the relative harm to the parties if the stay is granted or denied, (2) the likelihood of the appellant's success on the merits, (3) the likelihood of immediate and irreparable harm if the stay is not granted, and (4) whether the public interest favors granting the stay.

Unless these procedures are followed, your appeal will be subject to dismissal (43 CFR 4.402). Be certain that **all** communications are identified by serial number of the case being appealed.

**NOTE:** A document is not filed until it is actually received in the proper office (43 CFR 4.401(a)). See 43 CFR Part 4, Subpart B for general rules relating to procedures and practice involving appeals.



**RECLAMATION STANDARDS**  
**for**  
**Exploration/Mining Activities, BLM Cedar City Field Office**

1. At the earliest feasible time, the operator will reclaim the area disturbed, except to the extent necessary to preserve evidence of mineralization. Reclamation will include reasonable measures to prevent or control onsite and offsite damage of public lands.
2. Reclamation will include but not be limited to:
  - a. Saving topsoil (top 3 to 6 inches) for final application after reshaping of disturbed areas.
  - b. Controlling erosion, landslides, and water runoff.
  - c. Isolating, removing, or controlling toxic materials.
  - d. Reshaping disturbed areas, applying topsoil, and revegetating where reasonably practicable.
  - e. Controlling noxious weeds invading the site.
  - f. Rehabilitating fisheries and wildlife habitat.
3. Access roads, unless otherwise approved by the authorized officer, will be closed by reshaping the disturbed area to near original contours, scarifying where compaction prevents seed covering, and revegetating with the mixture specified below. Water bars will be placed on steep inclines and access blocked to future vehicular traffic.
4. Unless otherwise approved in the acceptance of the notice, all high walls or material piles will be recontoured to slopes not steeper than 3:1 and revegetated using the recommended mixture.
5. Authorized pits with high walls in excess of 4 feet will be fenced or barricaded to protect unsuspecting public land users from injury. All shafts and adits will be covered or blocked to prevent unauthorized or accidental entry.
6. Seeding of disturbed areas will be done between September 30 and December 15. Seed should not be placed on top of deep snow. Seed beds will be prepared to a depth of 6 inches by ripping, discing, or harrowing. Seed will be planted with a rangeland or farm drill or broadcast seeded. If broadcast seeded, the seed will be harrowed or raked  $\frac{1}{4}$  to  $\frac{1}{2}$  inch into the soil. The seed amount described below will be doubled if the area is broadcast seeded. The recommended seed mixture to be used on all disturbed areas if applied by a drill includes:

Blue-bunch wheatgrass	2 lb / acre
Indian ricegrass (var. Nezpar)	1 lb / acre
Smooth brome grass	1 lb / acre
Pubescent wheatgrass	1 lb / acre
Small Burnet	1 lb / acre
Fourwing saltbush	$\frac{1}{2}$ lb / acre
Bitterbrush	$\frac{1}{2}$ lb / acre
Lewis Flax	$\frac{1}{2}$ lb / acre
Palmer Penstemon	$\frac{1}{2}$ lb / acre
7. All hazardous tailing dumps, materials or substances produced by the operation will be disposed of in accordance with applicable federal and state laws. All waste, debris, buildings, and materials will be removed from the site and deposited at appropriate waste facilities.
8. All dry drill holes will be plugged with uncontaminated native material to a depth of 5 feet. The top 5 feet will be plugged with cement. Drill holes which encounter water will also be cemented from at least 50 feet below to 50 feet above the saturated zone. The location, depth, and relative flow rate of any subsurface water encountered will be reported to the authorized officer.
9. Additional reclamation requirements may be needed on a case-by-case basis. These additional requirements will be issued by the authorized officer after consultation with the operator.
10. The authorized officer will be notified within 10 days of final reclamation.